AO 120 (Rev. 2/99)

TO: Mail Stop 8 Director of the U.S. Patent & Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	**REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK**

In Compliance with 35 § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court Northern District of California on the following X Patents or ☐ Trademarks.

DOCKET NO.	DATE FILED	U.S. DISTRICT COURT
CV 10-01579 CRB	4/14/10	450 Golden Gate Avenue, 16th Floor, San Francisco, CA 94102
PLAINTIFF TOP VICTORY ELECTRONICS ET AL		DEFENDANT HITACHI LTD. ET AL

PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1		See copy of complaint sent previously
2		See attached pg 1
3		
4		
5		

In the above—entitled case, the following patent(s) have been included:

DATE INCLUDED	INCLUDED BY ☐ Amendment ☐ Answer ☐ Cross Bill ☐ Other Pleading	
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1		
2		
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In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT
See attached copy of Order by Judge Charles R. Breyer

CLERK	(BY) DEPUTY CLERK	DATE
Richard W. Wieking	Maria Loo	November 17, 2010

Copy 1—Upon initiation of action, mail this copy to Commissioner Copy 3—Upon termination of action, mail this copy to Commissioner
Copy 2—Upon filing document adding patent(s), mail this copy to Commissioner Copy 4—Case file copy

Accordingly, standing is not proper and the Court does not have subject matter jurisdiction. The Motion to Dismiss is thus GRANTED. The Motions to Enjoin and to Amend the Complaint are both DENIED.

I. BACKGROUND

Hitachi assigned the patents at issue pursuant to a "Demerger Plan"[1] signed May 26, 2009. Demerger Agreement Translation (Doc. 33-9). The Demerger Plan became effective July 1, 2009, effectively transferring Hitachi's Consumer Business Group and assigning the patents at issue to Hitachi Consumer Electronics (HCE). Hitachi filed a translated copy of the Demerger Plan and a copy in the original Japanese as Exhibits to the Defendants' Opposition to the Motion to Enjoin, filed August 20, 2010. See Demerger Agreement Translation (Doc. 33-9); Demerger Agreement (Doc. 33-7). One of the patents is also owned in part by another Hitachi subsidiary, Hitachi Advanced Digital (HAD). See Mot. to Dismiss (Doc. 19) at 4. Importantly, neither of the subsidiaries to whom the patents are assigned, HCE and HAD, are defendants in this case.

Plaintiff filed this action on April 14, 2010, nearly a year after the Demerger Plan became effective. Plaintiff had reason to believe that Defendants owned the patents at issue, as a result of communications from representatives of Hitachi and Inpro regarding Plaintiff's use of the patents. Opp. to Mot. to Dismiss (Doc. 35) at 6; Chen. Decl. (Doc. 39), ¶ 3, Ex. 2. However, these potential misrepresentations are not material to legal ownership of the patents; ownership and assignment of patents is controlled by written agreements between assignor and assignee. See 35 U.S.C. § 261 (2006) (patent ownership may only be conveyed by written assignment).

Plaintiff cites Hitachi's notices of assignment, filed with the U.S. Patent and Trademark Office (USPTO) on May 25, 2010, as evidence that Hitachi was the owner of the patents at the time the action was filed. Opp. to Mot. to Dismiss (Doc. 35) at 5. The documents Hitachi filed with the USPTO state that Hitachi "is the owner" and that the

[1] The "Demerger Plan" refers to the legal agreement, executed under Japanese law, under which Hitachi spun-off its Consumer Business Group.

assignment of the patents "has been transferred." Notices of Assignment (Docs. 36-12, 36-13, 36-14). Hitachi concedes that the notices read as if Hitachi were still the owner as of May 25, 2010. See Second Decl. Yokoo (Doc. 50-1) ¶¶ 7-8 (indicating that Hitachi intends to amend the notices to clarify that the assignment became effective July 1, 2009). However, filing notice with the USPTO is not required for assignment to be effective, nor does it speak to the validity of the underlying assignment. See 35 U.S.C. § 261; 37 § C.F.R. 3.54 (2010); Manual of Patent Examining Procedure (MPEP) (8th ed. Rev. 8, Jul. 2010) §§ 301, 317.03. The underlying contract assigning the patents is the critical document. See 35 U.S.C. § 261. Plaintiff's characterization of Hitachi as the actual owner of the patents thus fails.[2]

Hitachi subsidiaries HCE and HAD filed suit against TPV and Vizio, another television manufacturer, on July 22, 2010 (three months after this action commenced) in the Eastern District of Texas.[3] Hitachi Consumer Elecs. Co., Ltd. and Hitachi Advanced Digital, Inc. v. Top Victory Elecs. Co., et al., Civil Case No. 2:10-cv-260 (E.D. Tex.). On August 6, 2010, Defendant filed this Motion to Dismiss. Mot. to Dismiss (Doc. 19). Plaintiff also moved this Court to enjoin the Texas action on August 6, 2010 and moved for leave to amend on August 20, 2010 to add HCE and HAD as defendants. Mot. to Enjoin (Doc. 23); Mot. for Leave to Amend (Doc. 40).

II. DISCUSSION

A. Standing in Patent Matters under the Declaratory Judgment Act

Article III standing, requiring an actual case or controversy between parties, is necessary for a federal court to exercise jurisdiction over a matter. See U.S. Const. art. III, § 2; Lujan v. Defenders of Wildlife, 504 U.S. 555, 559 (1992). A matter must be dismissed if standing is not proper at the commencement of the suit. Schreiber Foods, Inc. v. Beatrice

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[2] Plaintiff does not argue that Inpro, the other Defendant, owns the patent at issue. See Opp. to Mot. to Dismiss (Doc. 35) at 1-2.

[3] Defendants note that there is a third suit involving TPV and related patents pending in the Eastern District of Texas, filed before this suit. Mot. to Dismiss (Doc. 19) at 2-3 (discussing Mondis Tech. Ltd. v. Top Victory Elecs., Co., et al., Civil Case No. 2:08-cv-478 (E.D. Tex., filed Dec. 23, 2008)). As that suit does not presently involve the patents at issue here, and Hitachi, HCE, and HAD are not parties to that action, it is immaterial.

Cheese, Inc., 402 F.3d 1198, 1203 (Fed. Cir. 2005). Standing is proper under the Declaratory Judgment Act, 28 U.S.C. § 2201 (2006), only if the court otherwise has jurisdiction. Prasco, LLC v. Medicis Pharm. Corp., 537 F.3d 1329, 1335 (Fed. Cir. 2008); see also Skelly Oil Co. v. Phillips Petroleum Co., 339 U.S. 667, 671-72 (the Act does not provide an independent basis for subject matter jurisdiction). For declaratory actions, the proper test is "whether the facts alleged, under all the circumstances, show that there is a substantial controversy, between the parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment." MedImmune, Inc. v. Genentech, Inc., 549 U.S. 118, 127 (2007) (quoting Maryland Cas. Co. v. Pac. Coal & Oil Co., 312 U.S. 270, 273 (1941)).

In order for a plaintiff to have standing in a declaratory action involving allegations of patent infringement, the defendant must have a legal right in the patent at issue that would allow the defendant to bring suit for infringement. See Fina Research, S.A. v. Baroid Ltd., 141 F.3d 1479, 1481 (Fed. Cir. 1998). Only patentees, assignees, and exclusive licenses have standing to bring a suit for infringement. See 35 U.S.C. § 281 (2006); Sicom Sys. Ltd. v. Agilent Techs., Inc., 427 F.3d 971, 976 (Fed. Cir. 2005). A defect in standing at the time a case is filed "cannot be cured by the addition of a party with standing." Schreiber Foods, 402 F.3d at 1203. "The declaratory judgment plaintiff bears the burden of proving that there is an actual controversy." Fina Research, 141 F.3d at 1481.

The Federal Circuit requires[4] that declaratory actions involving patent infringement allegations meet a two-prong test: "(1) an explicit threat or other action by the patentee, which creates a reasonable apprehension on the part of the declaratory plaintiff that it will face an infringement suit, and (2) present activity which could constitute infringement or concrete steps taken with the intent to conduct such activity." Fina Research, 141 F.3d at 1481. The Federal Circuit has applied this test to find that standing is not proper in a declaratory judgment action where the defendant is a non-exclusive licensee. See Fina

[4] The Federal Circuit is binding on district courts in matters of patent law, including jurisdictional matters. See, e.g, Panduit Corp. v. All States Plastic Mfg. Co., 744 F.2d 1564, 1574 (Fed. Cir. 1984) (per curiam); DePuy, Inc. v. Zimmer Holdings, Inc., 384 F. Supp. 2d 1237, 1238 (N.D. Ill. 2005) (applying Federal Circuit precedent on standing in a patent infringement suit).

Research, 141 F.3d at 1481; Enzo APA & Son, Inc. v. Geapag A.G., 134 F.3d 1090, 1093-94 (Fed. Cir. 1998) (dismissing a declaratory judgment claim for failure to join a necessary party, where a non-exclusive licensee defendant, who asserted a counterclaim of infringement, lacked standing). More generally, the Federal Circuit found "no actual controversy between [parties] that would support jurisdiction under the Declaratory Judgment Act," and thus no standing, where defendants in a declaratory action have "no legal interest [in the patents at issue] and therefore could not bring suit for patent infringement." Fina Research, 141 F.3d at 1480-81 (summarizing a nonprecedential decision); accord GMP Techs., LLC v. Zicam, LLC, 2009 WL 5064762, at *2 (N.D. Ill. Dec. 9, 2009). This reasoning follows from the test itself, which refers to the "patentee" and threat of an infringement suit, which can only be properly brought by a patent owner, assignee, or exclusive licensee. See Sicom Sys., 427 F.3d at 976; Fina Research, 141 F.3d at 1481. A declaratory judgment action must be dismissed for lack of standing if the plaintiff fails to name the patent owner, assignee, or exclusive licensee, even if the plaintiff was led to believe that the named defendant was in fact the patent owner. See Newmatic Sound Systems, Inc. v. Magnacoustics, Inc., No. C. 10-00129, 2010 WL 1691862, at *4 (N.D. Cal. Apr. 23, 2010).

Accordingly, standing is not proper for legal claims arising under the Patent Act as neither Defendant was an owner, assignee, or exclusive licensee of the patents when the action was filed in April, 2010. As discussed above, Hitachi assigned the patents to its subsidiary HCE effective July 1, 2009. See Demerger Agreement Translation (Doc. 33-9). Further, Hitachi did not retain any ownership interest or an exclusive license upon transfer, nor was ownership transferred to Inpro. Id. Therefore, this Court does not have jurisdiction over requests for relief under the Patent Act.

B. Standing for Equitable Title Holders of a Patent

While the Federal Circuit has been clear that ownership, assignment, or an exclusive license are required for legal remedies, it has indicated that in some circumstances an equitable owner without legal title may pursue equitable remedies. See Arachnid, Inc. v.

Merit Indus., Inc., 939 F.2d 1574, 1578-80 (Fed. Cir. 1991) (discussing possibility of a court having jurisdiction over claims for equitable relief by an equitable title holder of a patent, emphasizing that an equitable title holder cannot seek damages or other remedies at law under the Patent Act). The court defined an equitable title as "the beneficial interest of one person whom equity regards as the real owner, although the legal title is vested in another." Id. at 1578 n.3.

One district court has found that the parent of a patent-holding subsidiary can be an equitable title holder to the patent, with standing to seek equitable remedies. See Pipe Liners, Inc. v. Am. Pipe & Plastics, Inc., 893 F. Supp. 704, 706 (S.D. Tex. 1995) (finding standing was proper where a parent owned a patent-holder subsidiary, where the matter would proceed regardless of whether the parent were joined as plaintiff).

Other district courts have declined to follow this reasoning, however, instead holding that "a parent [corporation] does not have equitable title in a patent solely by virtue of its ownership of the subsidiary." Steelcase, Inc. v. Smart Techs., Inc., 336 F. Supp. 2d 714, 719 (W.D. Mich. 2004); accord Beam Laser Sys., Inc. v. Cox Commc'ns., Inc., 117 F. Supp. 2d. 515, 520-21, 520 n.6 (E.D. Va. 2000) (noting that the Federal Circuit has only recognized equitable title to a patent in a matter involving a contract assigning patent rights to an invention that had yet to be discovered at the time the contract was formed).

That a corporate parent's subsidiary owns a patent is not enough to establish that the parent has rights in the subsidiary's patents. See Spine Solutions, Inc. v. Medtronic Sofamor Danek USA, Inc., 620 F.3d 1305, 1317-18 (Fed. Cir. 2010) (holding that where nothing in the record indicated that the parent was an exclusive licensee of the patent, the court could not exercise jurisdiction over the parent). And the Federal Circuit has not held that a corporate parent inherently owns equitable title in a subsidiary's patents. See Beam Laser Sys., 117 F. Supp. 2d at 520 n.6. Moreover, corporate law sets clear boundaries between parents and subsidiaries. See Quantum Corp. v. Riverbed Tech., Inc., No. C. 07-04161, 2008 WL 314490, at *1-3 (N.D. Cal. Feb. 4, 2008); Steelcase, 336 F. Supp. 2d at 719; Beam Laser Sys., 117 F. Supp. 2d at 519-20. This Court has held that even if the companies are closely

operated and the parent purports to act on behalf of the subsidiary, a parent does not have standing in a suit involving patents held by a subsidiary without a showing that boundaries between the corporations have been breached. See Quantum, No. C 07-04161, 2008 WL 314490, at *1-3 (N.D. Cal. Feb. 4, 2008) (parent did not have standing in such circumstances where there was no written assignment and no showing that parent was the alter ego of subsidiary).

Plaintiff's assertion that Hitachi, as the corporate parent of the actual patent-holders HCE and HAD, is an equitable title holder to the patents, is therefore insufficient to establish standing. See Opp. to Mot. to Dismiss (Doc. 35) at 4, 9. Plaintiff only alleges that Hitachi is the equitable title holder because the companies are "closely intertwined by virtue of their parent/subsidiary relationship" and because Hitachi "stands to materially gain, or lose," as a result of this action. Opp. to Mot. to Dismiss (Doc. 35) at 10-11. This does not meet the Plaintiff's burden to establish standing.

III. CONCLUSION

Plaintiff has failed to meet its burden to establish standing, by failing to bring suit against the actual owners of the patents at issue. Standing is not proper now and was not proper when the suit was filed. A lack of standing cannot be cured by adding a party with standing. Schreiber Foods, 402 F.3d at 1203. The Motion to Dismiss is therefore GRANTED, without prejudice. As the Court lacks jurisdiction over this case, the Motions to Enjoin and to Amend the Complaint are both DENIED.

IT IS SO ORDERED.

Dated: November 15, 2010

CHARLES R. BREYER
UNITED STATES DISTRICT JUDGE

United States District Court
For the Northern District of California

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

TOP VICTORY ELECTRONICS (TAIWAN) CO., LTD., a Taiwanese corporation; TPV INTERNATIONAL (USA), INC., a California corporation; TPV ELECTRONICS (FUJIAN) CO., LTD., a Chinese corporation; TOP VICTORY ELECTRONICS (FUJIAN) CO., LTD., a Chinese corporation; and ENVISION PERIPHERALS, INC., a California corporation,

Plaintiffs,

v.

HITACHI, LTD., a Japanese corporation; INPRO LICENSING SARL, a Luxembourg SARL,

Defendants.

Case No. C 10 1579 CRB

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiffs TOP VICTORY ELECTRONICS (TAIWAN) CO., LTD., TPV INTERNATIONAL (USA), INC., TPV ELECTRONICS (FUJIAN) CO., LTD., TOP VICTORY ELECTRONICS (FUJIAN) CO., LTD., and ENVISION PERIPHERALS, INC. (collectively, "Plaintiffs"), for their claims for relief herein against defendants HITACHI, LTD. and INPRO LICENSING SARL, aver as follows:

JURISDICTION AND VENUE

1. This is an action for declaratory judgment of non-infringement, invalidity, and unenforceability of eighteen United States patents pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, and the patent laws of the United States, 35 U.S.C. § 100 *et seq.*

2. In their Claim for Relief, Plaintiffs seek a judicial declaration that Plaintiffs' television products do not infringe United States Patent Nos. 5,502,497; 5,534,934; 5,828,417; 6,037,995; 6,057,812; 6,185,228; 6,304,236; 6,388,713; 6,549,243; 6,600,870; 6,639,588; 6,686,895; 6,693,966; 7,012,769; 7,089,342; 7,286,310; 7,475,180; and 7,475,181 (the "PATENTS-IN-SUIT") and/or that the PATENTS-IN-SUIT are invalid or unenforceable.

3. This Court has original jurisdiction over the Claim for Relief under 28 U.S.C. §§ 1331 and 1338(a).

4. Venue is proper in this district under 28 U.S.C. §1391(b) and (d). Plaintiffs TPV INTERNATIONAL (USA), INC. and ENVISION PERIPHERALS, INC. are California corporations. Plaintiff ENVISION PERIPHERALS, INC. has its headquarters in Alameda County, California. This action includes patent-based declaratory judgment claims arising from conduct occurring in or directed to Alameda County.

INTRADISTRICT ASSIGNMENT

5. This is an Intellectual Property Action and shall therefore be assigned on a district-wide basis in accordance with Local Rule 3-2(c).

PARTIES

6. Plaintiff TOP VICTORY ELECTRONICS (TAIWAN) CO., LTD. is, and at all times material hereto was, a corporation organized and existing under the laws of Taiwan with its principal place of business in Zhounghe City, Taiwan.

7. Plaintiff TPV INTERNATIONAL (USA), INC. is, and at all times material hereto was, a corporation organized and existing under the laws of the State of California with its principal place of business in Austin, Texas.

8. Plaintiff TPV ELECTRONICS (FUJIAN) CO., LTD. is, and at all times material hereto was, a corporation organized and existing under the laws of the People's Republic of China with its principal place of business in Fuqing City, China.

9. Plaintiff TOP VICTORY ELECTRONICS (FUJIAN) CO., LTD. is, and at all times material hereto was, a corporation organized and existing under the laws of the People's Republic of China with its principal place of business in Fuqing City, China.

10. Plaintiff ENVISION PERIPHERALS, INC. is, and at all times material hereto was, a corporation organized and existing under the laws of the State of California with its principal place of business in Fremont, California.

11. On information and belief, defendant HITACHI, LTD. ("HITACHI") is, and at all times material hereto was, a corporation organized and existing under the laws of Japan.

12. On information and belief, defendant INPRO LICENSING SARL ("INPRO") is, and at all times material hereto was, an SARL organized and existing under the laws of the Luxembourg.

CLAIM FOR RELIEF

13. Plaintiffs repeat and incorporate here the allegations of paragraphs 1 through 12 of this complaint.

14. On information and belief, HITACHI claims to be the owner or the exclusive licensee of the eighteen PATENTS-IN-SUIT:

U.S. Patent No. 6,057,812, issued May, 2, 2000, and titled "Image Display Apparatus Which Both Receives Video Information And Outputs Information About Itself," a true and correct copy which is attached hereto as **Exhibit A**;

U.S. Patent No. 6,304,236, issued October 16, 2001, and titled "Display Apparatus For Adjusting The Display Image Using A Control Signal From An External Computer," a true and correct copy of which is attached hereto as **Exhibit B**;

U.S. Patent No. 6,639,588, issued October 28, 2003, and titled "Image Display Apparatus," a true and correct copy of which is attached hereto as **Exhibit C**;

U.S. Patent No. 6,686,895, issued February 3, 2004, and titled "Display Unit For Displaying An Image Based On A Video Signal Received From A Personal Computer Which Is Connected To An Input Device," a true and correct copy of which is attached hereto as **Exhibit D**;

U.S. Patent No. 7,089,342, issued August 8, 2006, and titled "Method Enabling Display Unit To Bi-Directionally Communicate With Video Source," a true and correct copy of which is attached hereto as **Exhibit E**;

U.S. Patent No. 7,475,180, issued January 6, 2009 and titled "Display Unit With Communication Controller And Memory For Storing Identification Number For Identifying Display Unit," a true and correct copy of which is attached hereto as **Exhibit F**; and

U.S. Patent No. 7,475,181, issued January 6, 2009 and titled "Display Unit With Processor And Communication Controller Which Communicates Information To The Processor," a true and correct copy of which is attached hereto as **Exhibit G**; and

U.S. Patent No. 5,502,497, issued March 26, 1996 and titled "Television Broadcasting Method And System Enabling Picture Broadcasting From The Transmitting Equipment To The Receiving Equipment Using Alternative Broadcasting System Standards," a true and correct copy of which is attached hereto as **Exhibit H**; and

U.S. Patent No. 5,534,934, issued July 9, 1996 and titled "Television Receiver Capable Of Enlarging And Compressing Image," a true and correct copy of which is attached hereto as **Exhibit I**; and

U.S. Patent No. 5,828,417, issued October 27, 1998 and titled "Television Receiver With On Screen Display For Reserving Programs To Be Recorded Or Viewed," a true and correct copy of which is attached hereto as **Exhibit J**; and

U.S. Patent No. 6,037,995, issued March 14, 2000 and titled "Broadcasting And Communication Receiver Apparatus," a true and correct copy of which is attached hereto as **Exhibit K**; and

U.S. Patent No. 6,185,228, issued February 6, 2001 and titled "Receiving Apparatus For Digital Broadcasting Signal And Receiving/Recording/Reproducing Apparatus Thereof," a true and correct copy of which is attached hereto as **Exhibit L**; and

U.S. Patent No. 6,388,713, issued May 14, 2002 and titled "Image Display Apparatus, And Method To Prevent Or Limit User Adjustment Of Displayed Image Quality," a true and correct copy of which is attached hereto as **Exhibit M**; and

U.S. Patent No. 6,549,243, issued April 15, 2003 and titled "Digital Broadcast Receiver Unit," a true and correct copy of which is attached hereto as **Exhibit N**; and

U.S. Patent No. 6,600,870, issued July 29, 2003 and titled "Input-Output Circuit, Recording Apparatus And Reproduction Apparatus For

Digital Video Signal," a true and correct copy of which is attached hereto as **Exhibit O**; and

U.S. Patent No. 6,693,966, issued February 17, 2004 and titled "Transmitting And Recording Method, Reproducing Method, And Reproducing Apparatus Of Information And Its Recording Medium," a true and correct copy of which is attached hereto as **Exhibit P**; and

U.S. Patent No. 7,012,769, issued March 14, 2006 and titled "Digital Information Recording/Reproducing Apparatus," a true and correct copy of which is attached hereto as **Exhibit Q**; and

U.S. Patent No. 7,286,310, issued October 23, 2007 and titled "Apparatus For Receiving Compressed Digital Information," a true and correct copy of which is attached hereto as **Exhibit R**.

15. On information and belief, INPRO is a co-owner, licensee, or licensing agent with respect to the PATENTS-IN-SUIT, or otherwise claims an interest therein.

16. Defendants HITACHI and INPRO (collectively "Defendants") have accused Plaintiffs of infringing the PATENTS-IN-SUIT by Plaintiffs' manufacture and sale of televisions in the United States, and have threatened to bring an action against Plaintiffs under 35 U.S.C. §§ 271(a), (b) and/or (c) alleging that Plaintiffs have infringed the PATENTS-IN-SUIT by Plaintiffs' manufacture and sale of television products.

17. Plaintiffs deny that they have infringed, or have contributed to or actively induced infringement of any valid and enforceable claim of any of the PATENTS-IN-SUIT through their manufacture and sale of television products. Therefore, an actual and justiciable controversy exists between Plaintiffs and Defendants regarding infringement, validity, and enforceability of the PATENTS-IN-SUIT. This actual and justiciable controversy arises under federal patent law.

18. Plaintiffs seek a declaratory judgment that they have not

infringed, contributed to, or actively induced such infringement of the PATENTS-IN-SUIT by any of their actions and/or a declaratory judgment that the PATENTS-IN-SUIT are invalid and/or unenforceable.

19. A judicial declaration is necessary and appropriate at this time pursuant to 28 U.S.C. § 2201, so that Plaintiffs may ascertain their rights and duties with respect to the PATENTS-IN-SUIT.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment in their favor as follows:

1. For a judicial declaration that the PATENTS-IN-SUIT, and each of them, are not and have not been infringed by Plaintiffs, and that the same are invalid and/or unenforceable;

2. That the Court determine that this is an extraordinary case and award Plaintiffs their attorneys' fees and litigation expenses under 28 U.S.C. § 1927, 35 U.S.C. § 285, and any other applicable statute or rule; and

3. That the Court award Plaintiffs such other and further relief as the Court deems just and proper.

Dated: April 14, 2010

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By: Mark A Samuels/AT
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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

TOP VICTORY ELECTRONICS,

Plaintiff,

v.

HITACHI LTD., et al.

Defendants.
/

No. C 10-01579 CRB

ORDER GRANTING MOTION TO DISMISS

11/15/10

Plaintiff Top Victory Electronics, Ltd., TPV Electronics, Co., Ltd., Top Victory Electronics, Co., Ltd., and Envision Peripherals, Inc. (collectively, TPV), brought this action for declaratory judgment of non-infringement of seven patents related to digital televisions. Defendants Hitachi, Ltd. (Hitachi) and Inpro Licensing SARL (Inpro) move to dismiss for lack of standing, and therefore lack of subject matter jurisdiction. Inpro also moves to dismiss for lack of personal jurisdiction. Plaintiff moves to enjoin an action involving the same patents filed by subsidiaries of Hitachi in the Eastern District of Texas, and moves for leave to file a second amended complaint here.

While the parties dispute ownership of the patents at issue, Defendants effectively show that they do not have legal title to the patents, and did not have legal title at the time the action was filed. Therefore standing is not proper under the Patent Act. Further, Plaintiff does not meet its burden to establish standing under an equitable title holder theory.